

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERICAL DIVISION)

MISCELLANEOUS CAUSE NO. 8 OF 2004

YUMMY LOAF LIMITED:.....APPLICANTS

VERSUS

1. INVESTMENT MASTERS LIMITED]
2. KAMPALA CITY COUNCIL LOCAL COUNCIL III].....RESPONDENTS
NAKAWA DIVISION]

BEFORE: HON. JUSTICE GEOFFREY KIRYABWIRE

R U L I N G

The matter before court arose from an application by way of Notice of Motion under rules 6,7 and 8 of the Civil Procedure (Amendment) (Judicial review) Rules 2003 and section 35 of the Judicature Statute. The Notice of Motion was for Judicial review and an order for relief under the prerogative orders of certiorari.

The brief facts are that the applicant Yummy Loaf Limited had applied to the second Respondent for a trading licence. The trading licences are issued by the second Respondent through an agency being the first Respondent. The collection of various fees by agents for and on behalf of Kampala city Council (KCC) has now become a common feature of the administrative working of Kampala City Council (KCC). In this particular case the applicant paid for a bake

house licence but the 1st Respondent refused to issue it until the applicant also paid for a wholesale licence. The applicant refused to pay for the wholesale licence saying that it would amount to a double levy, which was contrary to the law. A stale mate then ensued leading up to this motion in court. At the hearing of the motion Mr. Kasozi appeared for the Applicant while Mr. Lule appeared for the 1st Respondent. The 2nd Respondent though served did not appear in court.

M. Lule raised a preliminary objection to the motion. Mr. Lule referred me to section 11(4) of the trade-licensing Act stating that the motion was premature, as the applicant should have appealed to the Minister first under the section. The section reads;

"Any applicant who is aggrieved by the refusal of the licensing authority to grant him or her a trading licence may appeal to the Minister whose decision shall be final".

Mr. Lule further argued that the motion was wrongly brought against his client who was enforcing the law as it is in the statute in respect of this dispute on double levy as it was alleged.

Mr. Kasozi in reply stated that S 11(4) stated that the appeal **May** be made to the Minister so it was not mandatory nor did it oust the Jurisdiction of this court.

Save for the above general arguments court was not assisted by other legal authority. Be that as it may the issue to my mind appears to be whether I should hear the motion before the applicant has exhausted other remedies available by statute.

It is well settled law that an application for Judicial review by way of certiorari is one of discretion which discretion the court should exercise Judiciously. How the court will exercise its discretion will vary from case to case after the court has made due inquiry into the circumstances giving rise to the application.

S.A. de Smith in his book **Constitutional and administrative Law** 3rd edition penguin Book P. 595 – 597, reviews the effect of alternative remedies to be found in statutes. It would appear that a matrix of variables may present themselves depending on the wording of the statute and nature of remedies being sought. However I can discern the following general principles from his writings, which I believe, would be applicable to the matter before me now.

1. There is a general presumption against excluding the right of access to the courts for the determination of Civil rights and obligations.

2. The original Jurisdiction of the Superior courts is ousted where a statute creates a new legal right or obligation and that same Act prescribes a specific method for its enforcement i.e taking proceedings in an inferior court or tribunal or by complaint or appeal to an administrative authority.
3. Where however the alternative remedy is only optional the court may Intervene and determine the issue in the first instance where the interests of Justice so demand or where the prescribed remedy is inadequate or less convenient.
4. Even where a court holds that its original Jurisdiction has been excluded it can still exercise a supervisory Jurisdiction after the appointed body or tribunal has acted, so as to see that the law has been duly observed.

In this particular case some new procedures as to trade licences have been put in place by Kampala City Council (KCC) involving agents. On the face of it is not clear how far their powers can go with respect to receiving money and not processing the licence on the basis of interpreting the trade licencing statute. Be that as it may in Annex 'G' to the affidavit supporting the motion counsel for the

applicant wrote a letter directly to the Town Clerk Kampala City Council (KCC) protesting the double levy.

In response to that letter The City Advocate of Kampala City Council in Annex 'E' stated;

"Kampala City Council is therefore prepared to defend itself against any suit which shall be brought against it at your cost".

It is clear to my mind that matters have now become legally contentious. With regard to section 11 (4) of The Trade Licensing Act I must agree that under the normal rules of interpretation an appeal to the Minister in the event of a refusal to licence is not mandatory. It is optional even though if a party opts to go that route the Minister's decision is final.

Given the legal contention in this application I find that it would be more convenient and in the interests of Justice that the court exercises original Jurisdiction to hear this application.

As to whether the 1st Respondent is a correct party or not is a matter I would not like to deal with in a summary manner. As I have said Kampala City Council (KCC) is now largely doing its licensing functions through agents and these

agents take decisions that affect the rights and obligations of various parties. It would therefore be in the interests of Justice that they too together with Kampala City Council are held accountable for actions they take. The preliminary objection is accordingly over ruled and the parties should argue the main application. Costs will follow the out come of the application.



Hon. Justice Geoffrey Kiryabwire

24th May 2004